

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

RICKY MONTES and ANNIE MONTES,

Plaintiffs,

-against-

NOTICE OF REMOVAL

Docket #

US PRAXIS, INC. and HOME DEPOT USA, INC.,

Defendants.

-----X

TO: THE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

FILED
U.S. DISTRICT COURT
2007 DEC 20 P 3:10
S.D. OF N.Y. W.P.

This Notice of removal on behalf of defendant US PRAXIS, INC.

respectfully shows:

1. An action was commenced against defendant in the Supreme Court of the State of New York, Putnam County on May 22, 2007 which action is entitled above. According to the Complaint, plaintiff demands judgment in amounts "exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction." Copies of the Summons and Complaint are attached hereto and marked as ***Exhibit "A"***.
2. Defendant timely interposed its answer to the Complaint. A copy of the Answer is annexed as ***Exhibit "B"***.
3. On June 20, 2007 defendant served a CPLR §3017(c) "Request for a Supplemental Demand" requiring plaintiff to set forth the total damages to which he

deems himself entitled. A copy of the "Request for Supplemental Demand" is annexed as *Exhibit "C"*.

4. On December 18, 2007, defendant received plaintiffs' Request for Supplemental Demand dated December 13, 2007. A copy is annexed as *Exhibit "D"*. In the response, plaintiffs' demand judgment against the defendant in the amount of more than \$15,000,00.00.

5. The above described action is now one in which this Court has original jurisdiction under the provisions of 28 U.S.C. 1332 and is one which may be removed to this Court by petitioner pursuant to the provisions of 28 U.S.C. 1441 in that the matter in controversy exceeds the jurisdictional minimum for federal diversity actions exclusive of interest and costs.

6. Plaintiffs were, at the time this action was commenced, and still are citizens of the State of New York and reside in Putnam County. US PRAXIS, INC. was, at the time this action was commenced, and still is, a corporation organized under the laws of the State of Illinois and having its principal place of business in the State of Illinois.

7. Co-defendant, HOME DEPOT USA, INC., was at the time this action was commenced, and still is, a corporation organized under the law of the State of Delaware and having its principle place of business in the State of Georgia.

WHEREFORE, defendant requests that the action now pending against it

in the Supreme Court of the State of New York, Putnam County, be removed therefrom to this Court.

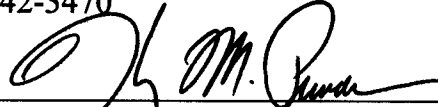
Dated: Mineola, New York
December 20, 2007

Yours, etc.,

KRAL, CLERKIN, REDMOND, RYAN,
PERRY & GIRVAN, LLP

Attorneys for Defendant
US PRAXIS INC., INC.
Office & P.O. Address
69 East Jericho Turnpike
Mineola, New York 11501
516-742-3470

BY:



HENRY M. PRIMAVERA (8788)
A Member of the Firm

TO: SCARCELLA LAW OFFICES
Attorneys for Plaintiffs
M. Sean Duffy, Esq.
44 Church Street, Suite 150
White Plains, New York 10601
(914) 682-1400

D'AMATO & LYNCH, ESQS.
Attorneys for Defendant
HOME DEPOT USA, INC.
70 Pine Street
New York, New York 10270
(212) 269-0927

ATTORNEY'S AFFIRMATION

STATE OF NEW YORK)

ss:

COUNTY OF NASSAU)

I, the undersigned, an attorney duly admitted to practice in the Courts of the State of New York, state:

That I am a member of the firm of KRAL, CLERKIN, REDMOND, RYAN, PERRY & GIRVAN, the attorneys of record for the defendant US PRAXIS, INC. in the within action;

I have read the foregoing NOTICE OF REMOVAL and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by the defendant is that the answering defendant maintains its principal place of business outside Nassau County.

The grounds of my belief as to all matters not stated upon my own knowledge are information, correspondence, conversations and a general investigation of the facts.

Dated: Mineola, New York
December 20, 2007


HENRY M. PRIMAVERA

US PRAXIS, INC.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

Filed: 1089/07

RICKY MONTES and ANNIE MONTES,
Plaintiffs,

INDEX NO.

-against-

Plaintiffs designate
PUTNAM County as
the place of trial.US PRAXIS, INC. and HOME DEPOT USA, INC.,
Defendants.

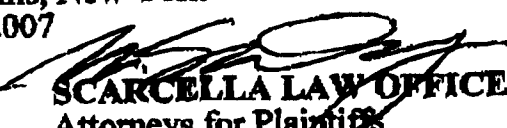
SUMMONS

The basis of venue is
Plaintiffs' residence:
106 Gleneida Avenue
Carmel, New York

To the above named Defendants:

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer on the plaintiffs' attorneys within 20 days after the service of this summons, exclusive of the day of service of this summons, or within 30 days after service of this summons is complete if this summons is not personally delivered to you within the State of New York.

In case of your failure to answer this summons, a judgment by default will be taken against you for the relief demanded in the complaint, together with the costs of this action.

Dated: White Plains, New York
May 22, 2007

SCARCELLA LAW OFFICES
Attorneys for Plaintiffs
M. Sean Duffy, Esq.
44 Church Street, Suite 150
White Plains, New York 10601
(914) 682-1400

US PRAXIS, INC.
955 West Prairie Drive
Sycamore, IL 60178

HOME DEPOT USA, INC.
Corporation Service Company
80 State Street
Albany, New York 12207

2007 MAY 22 PM 3:25

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM**

INDEX NO. *1089/87*

**RICKY MONTES and ANNIE MONTES,
Plaintiffs,**

COMPLAINT

-against-

**US PRAXIS, INC. and HOME DEPOT USA, INC.,
Defendants.**

**Plaintiffs, by their attorneys, SCARCELLA LAW OFFICES, as and for
their Complaint, respectfully allege, upon information and belief:**

AS AND FOR A FIRST CAUSE OF ACTION

- 1. The plaintiff, RICKY MONTES, at all times herein mentioned was and
still is a resident of the County of Putnam and the State of New York.**
- 2. The defendant US PRAXIS, INC., at all times herein mentioned, was and
still is a corporation organized and existing under the laws of the State of IL, with
its principal place of business situated in the County of DeKalb and the State of
New York.**
- 3. The defendant US PRAXIS, INC., at all times herein mentioned was and
still is a foreign corporation duly licensed and authorized to do business in the
State of New York.**
- 4. The defendant, US PRAXIS, INC., at all times herein mentioned
conducted and carried on business in the County of DeKalb and the State of IL.**
- 5. The defendant, US PRAXIS, INC., at all times herein mentioned was and
still is a partnership doing business in the County of DeKalb and the State of New
York.**

2007 MAY 22 PM 3:25

PUTNAM COUNTY
CLERK

6. The defendant, US PRAXIS, INC., at all times herein mentioned was and still is a limited liability partnership doing business in the County of DeKalb and the State of New York.

7. The defendant, US PRAXIS, INC., at all times herein mentioned was and still is a limited liability corporation doing business in the County of DeKalb and the State of New York.

8. The defendant, US PRAXIS, INC., at all times herein mentioned was and still is a sole proprietorship doing business in the County of DeKalb and the State of New York.

9. At all times herein mentioned, defendant US PRAXIS, INC. transacted business within the State of New York.

10. At all times herein mentioned, defendant US PRAXIS, INC. derived substantial revenue from goods used or consumed or services rendered in the State of New York.

11. At all times herein mentioned, defendant US PRAXIS, INC. expected or should reasonably have expected its acts to have consequences in the State of New York.

12. At all times herein mentioned, defendant US PRAXIS, INC. derived substantial revenue from interstate or international commerce.

13. The defendant HOME DEPOT USA, INC., at all times herein mentioned, was and still is a corporation organized and existing under the laws of the State of New York, with its principal place of business situated in the County

of Albany and the State of New York.

14. The defendant HOME DEPOT USA, INC., at all times herein mentioned was and still is a foreign corporation duly licensed and authorized to do business in the State of New York.

15. The defendant, HOME DEPOT USA, INC., at all times herein mentioned conducted and carried on business in the County of Putnam and the State of New York.

16. The defendant, HOME DEPOT USA, INC., at all times herein mentioned was and still is a partnership doing business in the County of Putnam and the State of New York.

17. The defendant, HOME DEPOT USA, INC., at all times herein mentioned was and still is a limited liability company / partnership doing business in the County of Putnam and the State of New York.

18. The defendant, HOME DEPOT USA, INC., at all times herein mentioned was and still is a limited liability company / corporation doing business in the County of Putnam and the State of New York.

19. At all times herein mentioned, defendant HOME DEPOT USA, INC. transacted business within the State of New York.

20. At all times herein mentioned, defendant HOME DEPOT USA, INC. derived substantial revenue from goods used or consumed or services rendered in the State of New York.

21. At all times herein mentioned, defendant HOME DEPOT USA, INC.

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US PRAXIS, INC.

expected or should reasonably have expected its acts to have consequences in the State of New York.

22. At all times herein mentioned, defendant HOME DEPOT USA, INC. derived substantial revenue from interstate or international commerce.

23. At all times herein mentioned, the defendant US PRAXIS, INC. was engaged in the business of designing and manufacturing stump grinding machines.

24. At all times herein mentioned, the defendant HOME DEPOT USA, INC. was engaged in the business of leasing stump grinding machines, supplied by defendant US PRAXIS, INC.

25. On June 14, 2007, Ricky Montes leased from defendant HOME DEPOT USA, INC., certain stump grinding machine, which was designed and manufactured by defendant US PRAXIS, INC.

26. That said stump grinding machine was not manufactured as intended.

27. That the entire product line of which said stump grinding machine was a part was unreasonably dangerous.

28. That said stump grinding machine was defective in that proper and complete warnings and instructions were not supplied.

29. That said stump grinding machine was defective in that the supplied warnings and instructions were deficient.

30. That said stump grinding machine was defective when it left the custody and control of defendants.

31. Upon the distribution, sale and/or lease of the aforesaid merchandise,

defendants warranted to all intended users, including plaintiff, that said merchandise and all its component parts were of merchantable quality and fit for the purposes for which they were designed, manufactured, assembled, inspected, sold and/or leased, and intended.

32. The plaintiff used within the State of New York said product, designed, manufactured, sold and/or leased, and distributed by defendants in accordance with the instructions and warnings.

33. The aforesaid product was inherently defective in both design and manufacture, and unsafe, inadequate and unfit for the purposes for which designed, manufactured, sold and distributed by defendants. The defendants by their agents, servants and/or employees were careless and negligent in the manufacture of said product and failed to use due care in the design, construction and testing thereof. The limitations and dangers inherent in the use of said product were not open and obvious, and could not be ascertained or known to plaintiff, either by visual inspection or by the execution of preliminary testing.

34. That defendants warranted that if the directions and warnings supplied were followed and observed, operation of said stump grinding machine would be safe for the user and not result in injury.

35. The warranties of the defendants were untrue.

36. As a result of the improper manufacture by defendant US PRAXIS, INC., the failure to properly warn, instruct and advise, and the breach of the warranties of merchantability and fitness for use by both defendants, the plaintiff

was injured within the State of New York and caused to sustain serious personal injuries, including but not limited to 2nd and 3rd degree burns on his right forearm from contact with the exhaust system of said stump grinding machine, through no fault of plaintiff's.

37. By reason of the foregoing, the plaintiff was rendered sick, sore, nervous and disabled.

38. Due to defendants' breach of warranty, plaintiff RICKY MONTES is entitled to damages.

AS AND FOR A SECOND CAUSE OF ACTION

39. Plaintiff RICKY MONTES repeats and realleges each and every allegation contained in paragraphs numbered "1" through "38" of the Complaint as if fully set forth at length herein.

40. As a result of the negligence of the defendants, RICKY MONTES was rendered sick, sore, nervous and disabled.

41. This action falls within one or more of the exceptions set forth in Section 1602 of the Civil Practice Law and Rules.

42. Due to defendants' negligence, plaintiff RICKY MONTES is entitled to damages.

AS AND FOR A THIRD CAUSE OF ACTION

43. Plaintiff RICKY MONTES repeats and realleges each and every allegation contained in paragraphs numbered "1" through "42" of the Complaint as if fully set forth at length herein.

44. That due to the foregoing, the aforesaid stump grinding machine was unreasonably dangerous, and that therefore defendants are strictly liable.

45. Due to defendants' liability, plaintiff RICKY MONTES is entitled to damages.

AS AND FOR A FOURTH CAUSE OF ACTION

46. Plaintiff Annie Montes repeats and realleges each and every allegation contained in paragraphs numbered "1" through "45" of the Complaint as if fully set forth at length herein.

47. At all times herein mentioned, plaintiff Annie Montes was the lawfully wedded spouse of plaintiff RICKY MONTES, and as such, was entitled to the services, earnings, consortium and society of RICKY MONTES.

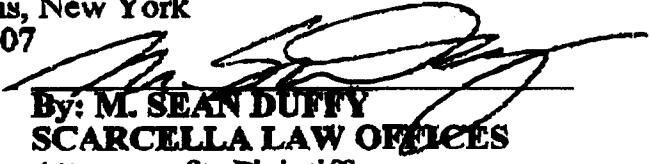
48. As a result of this accident, this plaintiff lost the said services, earnings, consortium and society of RICKY MONTES, and was caused to expend monies in the care and treatment of the injuries so sustained by RICKY MONTES.

49. Due to defendants' tortious and/or wrongful conduct as herein alleged, plaintiff Annie Montes is entitled to damages.

WHEREFORE, the plaintiffs demand:

- a. judgment awarding damages on the first cause of action, in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- b. judgment awarding damages on the second cause of action, in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- c. judgment awarding damages on the third cause of action, in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- d. judgment awarding damages on the fourth cause of action, in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- e. interest, the costs and disbursements of this action, together with such other and further relief as to this Court seems just and proper.

Dated: White Plains, New York
May 22, 2007


By: M. SEAN DUFFY
SCARCELLA LAW OFFICES
Attorneys for Plaintiffs
44 Church Street, Suite 150
White Plains, New York 10601
(914) 682-1400

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

=====X

RICKY MONTES and ANNIE MONTES,

Index No.: 1089/07

Plaintiffs,

-against-

VERIFIED ANSWER

US PRAXIS, INC. and HOME DEPOT USA, INC.,

Defendants.

=====X

Defendant, US PRAXIS, INC., by its attorneys, KRAL, CLERKIN, REDMOND,
RYAN, PERRY & GIRVAN, answering the Complaint of the plaintiff, sets forth upon
information and belief the following:

ANSWERING A FIRST CAUSE OF ACTION

FIRST: Defendant denies having knowledge or information sufficient to
form a belief as to the truth of the allegations contained in paragraphs "1", "13", "14",
"15", "16", "17", "18", "19", "20", "21", "22", "23", "24", "25" and "32" of the Complaint.

SECOND: Defendant denies each and every allegation contained in
paragraphs "5", "6", "7", "8", "26", "27", "28", "29", "33", "34", "35", "36", "37" and "38"
of the Complaint.

THIRD: Defendant denies having knowledge or information sufficient to
form a belief as to the truth of the allegations contained in paragraph "30" of the
Complaint except denies that the stump grinding machine was defective when it left the
custody and control of defendant US PRAXIS, INC.

FOURTH: Defendant denies each and every allegation contained in paragraph "31" of the Complaint in the form alleged and respectfully refers all questions of law to the determination of the court.

ANSWERING A SECOND CAUSE OF ACTION

FIFTH: Answering paragraph "39" of the Complaint, defendant repeats, reiterates and reaffirms each and every admission and denial to the allegations contained in paragraphs "1" through "38" inclusive with the same force and effect as if fully set forth herein.

SIXTH: Defendant denies each and every allegation contained in paragraphs "40", "41" and "42" of the Complaint.

ANSWERING A THIRD CAUSE OF ACTION

SEVENTH: Answering paragraph "43" of the Complaint, defendant repeats, reiterates and reaffirms each and every admission and denial to the allegations contained in paragraphs "1" through "42" inclusive with the same force and effect as if fully set forth herein.

EIGHTH: Defendant denies each and every allegation contained in paragraphs "44" and "45" of the Complaint.

ANSWERING A FOURTH CAUSE OF ACTION

NINTH: Answering paragraph "46" of the Complaint, defendant repeats, reiterates and reaffirms each and every admission and denial to the allegations contained in paragraphs "1" through "45" inclusive with the same force and effect as if fully set forth herein.

TENTH: Defendant denies having knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "47" of the Complaint.

ELEVENTH: Defendant denies each and every allegation contained in paragraphs "48" and "49" of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

TWELFTH: Upon information and belief, the injuries sustained by plaintiff and any alleged damages were caused in whole or in part, or were contributed to by reason of the negligence, want of care, carelessness, assumption or risk, or other culpable conduct on the part of the plaintiff and by reason of the foregoing, the damages allegedly attributable or otherwise recoverable herein should be reduced proportionately.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

THIRTEENTH: That the plaintiff could, with due diligence, have obtained personal jurisdiction over tortfeasors not a party to this lawsuit. Therefore, the culpability of these missing or absent tortfeasors may be computed into the apportionment of total culpability causing the subject occurrence.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

FOURTEENTH: This answering defendant's equitable share of the total liability assigned to all persons liable, if any, if fifty percent (50%) or less.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

FIFTEENTH: That this action was not commenced within the applicable time limits, and therefore, the Statute of Limitations constitutes a complete defense to the plaintiff's action.

AS AND FOR A CROSS-CLAIM AGAINST HOME DEPOT USA, INC.

SIXTEENTH: That if the plaintiff was caused to sustain damages as alleged in the Verified Complaint, then such damages were caused solely and wholly as a result of the negligence of defendant, HOME DEPOT USA, INC., all without any negligence on the part of the defendant, US PRAXIS, INC.

SEVENTEENTH: That if the plaintiff should recover judgment against US PRAXIS, INC. by reason of the allegations set forth in the Verified Complaint, then it will have been damaged as a result of the negligence of defendant, HOME DEPOT USA, INC., and as such, will be liable to defendant, US PRAXIS, INC., in contribution in whole or in part for the amount of any judgment on the basis of the respective responsibility or fault as determined by the Court and/or jury at the time of trial of this action.

WHEREFORE, the answering defendant, US PRAXIS, INC., demands judgment dismissing plaintiff's Verified Complaint as to the answering defendant with costs, and further demands that the ultimate rights of the answering defendant and the defendant, HOME DEPOT USA, INC., as between themselves be determined in this action, and that the answering defendant has judgment over and against the defendant, HOME DEPOT USA, INC., for all or a part of any verdict or judgment which may be obtained

herein by the plaintiff against the answering defendant, together with costs and disbursements of this action.

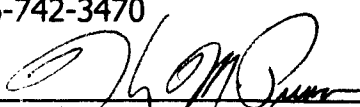
WHEREFORE, the answering defendant, US PRAXIS, INC. demands judgment dismissing plaintiffs' Complaint as to the answering defendant with costs, and further demands that the ultimate rights of the answering defendant and the defendant, HOME DEPOT USA, INC., as between themselves be determined in this action, and that the answering defendant has judgment over and against the defendant US PRAXIS INC. for all or a part of any verdict or judgment which may be obtained herein by the plaintiff against the answering defendant, together with costs and disbursements of this action.

Dated: Mineola, New York
June 20, 2007

Yours, etc.,

KRAL, CLERKIN, REDMOND, RYAN,
PERRY & GIRVAN, LLP

Attorneys for Defendant
US PRAXIS, INC.
Office & P.O. Address
69 East Jericho Turnpike
Mineola, New York 11501
516-742-3470

BY: 
HENRY M. PRIMAVERA

TO: SCARCELLA LAW OFFICES
Attorneys for Plaintiffs
M. Sean Duffy, Esq.
44 Church Street, Suite 150
White Plains, New York 10601

HOME DEPOT USA, INC.
2455 Paces Ferry Road
Atlanta, Georgia 30339-4024

ATTORNEY'S AFFIRMATION

STATE OF NEW YORK)
SS:
COUNTY OF NASSAU)

I, the undersigned, an attorney duly admitted to practice in the Courts of the State of New York, state:

That I am a member of the firm of KRAL, CLERKIN, REDMOND, RYAN, PERRY & GIRVAN, LLP, the attorneys of record for the defendant US PRAXIS, INC. in the within action;

I have read the foregoing Answer and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe it to be true. The reason this verification is made by me and not by the defendant is that the answering defendant maintains its principal place of business outside Nassau County.

The grounds of my belief as to all matters not stated upon my own knowledge are information, correspondence, conversations and a general investigation of the facts.

Dated: Mineola, New York
June 20, 2007



HENRY M. PRIMAVERA

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

-----X

RICKY MONTES and ANNIE MONTES,

Plaintiffs,

-against-

US PRAXIS, INC. and HOME DEPOT USA, INC.,

Defendants.

-----X

COUNSELORS:

PLEASE TAKE NOTICE, that pursuant to CPLR Section 3017(c) defendant, US PRAXIS, INC., hereby demand that within fifteen (15) days plaintiffs, RICKY MONTES AND ANNIE MONTES, provide a Supplemental Demand setting forth the total damages to which plaintiffs deems themselves entitled.

PLEASE TAKE FURTHER NOTICE, that in the event the Supplemental Demand is not served within fifteen (15) days of this request, defendant shall move for an Order requiring plaintiffs' compliance.

Dated: Mineola, New York
June 20, 2007

Index #1089/07

**CPLR Section 3017(c)
REQUEST FOR A
SUPPLEMENTAL DEMAND**

Yours, etc.,

KRAL, CLERKIN, REDMOND, RYAN,
PERRY & GIRVAN, LLP

Attorneys for Defendant
US PRAXIS, INC.

Office & P.O. Address

69 East Jericho Turnpike

Mineola, New York 11501

(516) 742-3470

BY: 

HENRY M. PRIMAVERA

TO: SCARCELLA LAW OFFICES

Attorneys for Plaintiffs

M. Sean Duffy, Esq.

44 Church Street, Suite 150

White Plains, New York 10601

HOME DEPOT USA, INC.

2455 Paces Ferry Road

Atlanta, Georgia 30339-4024

RICKY MONTES and ANNIE MONTES,

Plaintiffs,

-against-

US PRAXIS, INC. and HOME DEPOT USA, INC.,

Defendants.

**VERIFIED ANSWER, DEMAND FOR A VERIFIED BILL OF PARTICULARS,
COMBINED DEMAND, NOTICE TO TAKE DEPOSITION UPON ORAL
EXAMINATION AND SUPPLEMENTAL DEMAND**

**KRAL, CLERKIN, REDMOND, RYAN
PERRY & GIRVAN, LLP
US PRAXIS, INC.**

Attorneys for

69 EAST JERICO TURNPIKE
MINEOLA, NEW YORK 11501
(516) 742-3470

§2103 (b) (5) Notice: Service of Papers by Electronic Means is Not Accepted

Pursuant to 22 NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed documents are not frivolous.

Dated: June 20, 2007

Signature:  HENRY M. PRIMAVERA

Print Signer's Name

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

☐

NOTICE OF
ENTRY

that the within is a (certified) true copy of a
entered in the office of the clerk of the within named Court on

20

☐

NOTICE OF
SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the
Hon. one of the judges of the within named Court,
at
on

20

, at

M.

Dated:

**KRAL, CLERKIN, REDMOND, RYAN
PERRY & GIRVAN, LLP**

Attorneys for

69 EAST JERICO TURNPIKE
MINEOLA, NEW YORK 11501

To:

Attorney(s) for

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

RICKY MONTES and ANNIE MONTES,
Plaintiffs,
-against-
US PRAXIS, INC. and HOME DEPOT USA, INC.,
Defendants.

INDEX NO. 1089/07


**RESPONSE TO
REQUEST FOR
SUPPLEMENTAL
DEMAND FOR
RELIEF**

Plaintiffs, by their attorneys, SCARCELLA LAW OFFICES, as and for her
Response to Defendant's Request for Supplemental Demand for Relief,
respectfully alleges, upon information and belief:

WHEREFORE, the plaintiffs demand:

- a. judgment awarding damages on the first cause of action, in the amount of \$5,000,000;
- b. judgment awarding damages on the second cause of action, in the amount of \$5,000,000;
- c. judgment awarding damages on the third cause of action, in the amount of \$5,000,000;
- d. judgment awarding damages on the fourth cause of action, in an amount exceeding the monetary jurisdictional limits of all lower courts which would otherwise have jurisdiction;
- e. interest, the costs and disbursements of this action, together with such other and further relief as to this Court seems just and proper.

Dated: White Plains, New York
December 13, 2007



By: **M. SEAN DUFFY, ESQ.**
SCARCELLA LAW OFFICES
Attorneys for Plaintiffs
44 Church Street, Suite 150
White Plains, New York 10601
(914) 682-1400

KRAL, CLERKIN, REDMOND, RYAN, PERRY & GIRVAN, LLP
Attorneys for Defendant US PRAXIS, INC.
69 East Jericho Turnpike
Mineola, New York 11501

D'AMATO & LYNCH
Attorneys for Defendant HOME DEPOT U.S.A., INC
70 Pine Street
New York, New York 10270

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

INDEX NO. 1089/07

RICKY MONTES and ANNIE MONTES,
Plaintiffs,

-against-

**AFFIDAVIT OF
MAIL SERVICE**

US PRAXIS, INC. and HOME DEPOT USA, INC.,
Defendants.

STATE OF NEW YORK
COUNTY OF WESTCHESTER

Fritz-Martez Kennedy, being duly sworn, says:

I am not a party to the action; I reside at Bronx, New York, and I am over 18 years of age.

On December 13, 2007, I served the within **RESPONSE TO REQUEST FOR SUPPLEMENTAL DEMAND FOR RELIEF** by depositing true copies thereof, enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within New York State, addressed to the following at the last known address set forth below:

KRAL, CLERKIN, REDMOND, RYAN, PERRY & GIRVAN, LLP
69 East Jericho Turnpike
Mineola, New York 11501

D'AMATO & LYNCH
70 Pine Street
New York, New York 10270



FRITZ-MARTEZ KENNEDY

Sworn to before me
on December 13, 2007



NOTARY PUBLIC

M SEAN DUFFY
Notary Public, State Of New York
No. 02DU5059605
Qualified In Westchester County
Commission Expires April 29, 2010

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF PUTNAM

Index No. 1089/07

RICKY MONTES and ANNIE MONTES,
Plaintiffs,

-against-

US PRAXIS, INC. and HOME DEPOT USA, INC.,
Defendants.

**RESPONSE TO REQUEST FOR
SUPPLEMENTAL DEMAND FOR RELIEF**

SCARCELLA LAW OFFICES

Attorneys for Plaintiffs
44 Church Street, Suite 150
White Plains, New York 10601
(914) 682-1400

DEC 18 2007

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

**RICKY MONTES and ANNIE MONTES,
Plaintiffs,**

-against-

AFFIDAVIT OF SERVICE

**US PRAXIS, INC. and HOME DEPOT USA, INC.,
Defendants.**

STATE OF NEW YORK)
) ss.:
COUNTY OF NASSAU)

LORETTA GRECO, being duly sworn, deposes and says:

That your deponent is not a party to the action and is over the age of 18 years and on December 20, 2007 deponent served the within NOTICE OF REMOVAL upon the attorneys for the respective parties to this action as follows:


SCARCELLA LAW OFFICES
Attorneys for Plaintiffs
M. Sean Duffy, Esq.
44 Church Street, Suite 150
White Plains, New York 10601
(914) 682-1400

D'AMATO & LYNCH, ESQS.
Attorneys for Defendant
HOME DEPOT USA, INC.
70 Pine Street
New York, New York 10270
(212) 269-0927

addresses designated by said attorneys for that purpose by depositing a true copy of same enclosed in a post-paid properly addressed wrapper in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.


LORETTA GRECO

Sworn to before me this
December 20, 2007.

December 20, 2007:-


 NOTARY PUBLIC

JOYCE KEDZIERSKI
Notary Public, State of New York
No. 01KE009771
Qualified in Nassau County
Commission Expires October 6, 20